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10 Attorneys for Plaintiff
11 CHARMANE HENDERSON

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 CHARMANE HENDERSON, individually and
as successor-in-interest to Decedent DEAUTRY
16 CHARLES ROSS,

17
18 Plaintiffs,

19 vs.

20 CITY OF TORRANCE, a municipal
21 corporation; BRIAN MCGEE, individually and
in his official capacity as a police officer for the
22 Torrance Police Department; JOSH BURDEN,
23 individually and in his official capacity as a
police officer for the Torrance Police
24 Department; JOSEPH CRAFT, individually and
in his official capacity as a police officer for the
25 Torrance Police Department; DANIEL
26 VAZQUEZ, individually and in his official
capacity as a police officer for the Torrance
27 Police Department; LANCE NELSON,
28 individually and in his official capacity as a
police officer for the Torrance Police

CASE NO.: 2:18-cv-03918-MWF-E

SECOND AMENDED COMPLAINT
FOR DAMAGES

(42 U.S.C. Section 1983 and pendent tort
claims)

JURY TRIAL DEMANDED

1 Department; CHRISTOPHER TOMSIC,
 2 individually and in his official capacity as a
 3 police officer for the Torrance Police
 4 Department; ALEX GONZALES, individually
 5 and in his official capacity as a police officer for
 6 the Torrance Police Department; and DOES 1-
 7 10, inclusive, individually and in their official
 8 capacity as police officers for the City of
 9 Torrance,

10 Defendants.

11 **INTRODUCTION**

12 1. This case arises out of the wrongful death of Deautry Charles Ross. On January 1,
 13 2018, Mr. Ross died while in the custody of the Torrance Police Department after he was needlessly
 14 shot with a stun gun by officer Brian McGee and unreasonably restrained by officers Josh Burden,
 15 Joseph Craft, Daniel Vazquez, Lance Nelson, Christopher Tomisc, and Alex Gonzales while he
 16 repeatedly complained that he could not breathe.

17 2. This civil rights and wrongful death action seeks compensatory and punitive damages
 18 from Defendants for violating various rights under the United States Constitution and state law in
 19 connection with the wrongful death of Deautry Charles Ross.

20 **JURISDICTION AND VENUE**

21 3. This action arises under Title 42 of the United States Code, § 1983. Title 28 of the
 22 United States Code, §§ 1331 and 1343 confers jurisdiction upon this Court. The unlawful acts and
 23 practices alleged herein occurred in the City of Torrance, County of Los Angeles, California, which
 24 is within the judicial district of this Court.

25 4. The Supplemental Jurisdiction of this court is invoked pursuant to 28 U.S.C. §
 26 1367 over the State law claims which are so related to federal claims in the action that they form part
 27 of the same case or controversy under Article III of the Constitution of the United States of America.

28 5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants are
 believed to reside in this district and all incidents, events, and occurrences giving rise to this action
 occurred in this district.

PARTIES

6. Decedent DEAUTRY CHARLES ROSS (hereinafter "Decedent") was an individual residing in the State of California. Decedent died intestate. Decedent did not file any legal actions prior to his death. To the extent that this action seeks to recover damages for the violation of rights personal to Decedent, this action is maintained by his Successor-in-Interest Charmane Henderson. Said Plaintiff is the person with standing to bring this action as Decedent was unmarried at the time of his death.

7. Plaintiff CHARMANE HENDERSON (hereinafter "Plaintiff"), is and was at all times herein mentioned the biological mother of Decedent. Plaintiff sues in her individual capacity and as Successor-in-Interest to Decedent.

8. Defendant CITY OF TORRANCE (hereinafter "City") is an incorporated public entity duly authorized and existing as such in and under the laws of the State of California; and at all times herein mentioned, Defendant City has possessed the power and authority to adopt policies and prescribe rules, regulations and practices affecting the operation of the Torrance Police Department and its tactics, methods, practices, customs and usage. At all relevant times, Defendant City was the employer of DOES Defendants, individually and as a peace officers.

9. Defendant BRIAN MCGEE (hereinafter "Defendant McGee"), was an officer for the Torrance Police Department, and is sued individually and in his official capacity.

10. Defendant JOSH BURDEN (hereinafter "Defendant Burden"), was an officer for the Torrance Police Department, and is sued individually and in his official capacity.

11. Defendant JOSEPH CRAFT (hereinafter "Defendant Craft"), was an officer for the Torrance Police Department, and is sued individually and in his official capacity.

12. Defendant DANIEL VAZQUEZ (hereinafter "Defendant Vazquez"), was an officer for the Torrance Police Department, and is sued individually and in his official capacity.

13. Defendant LANCE NELSON (hereinafter "Defendant Nelson"), was an officer for the Torrance Police Department, and is sued individually and in his official capacity.

14. Defendant CHRISTOPHER TOMSIC (hereinafter "Defendant Tomsic"), was an officer for the Torrance Police Department, and is sued individually and in his official capacity.

1 him to the ground. Without just cause or provocation, Defendant McGee then needlessly shot
2 Decedent with his stun gun. Decedent immediately began to complain that he could not breathe.
3 Without regard, Defendants Burden, Craft, Vazquez, Gonzales, Nelson, and Tomsic then proceeded
4 to bind Decedent's arms and legs as he continued to complain that he could not breathe. Without
5 justification, Defendants Burden, Craft, Vazquez, Gonzales, Nelson, and Tomsic then proceeded to
6 physically and improperly restrain Decedent with their hands and legs while Decedent's body was in
7 a prone position, cutting off his air supply and causing him to slowly and painfully die while in
8 Defendants custody as they ignored his final pleas for help.

9 20. Decedent's death was proximately caused by the injuries he suffered at the hands of
10 the Defendants.

11 21. Plaintiff alleges that a reasonable officer in Defendants' position would have clearly
12 been on notice that Decedent did not pose a threat of harm to anyone at the time that he was needlessly
13 shot with a stun gun and needlessly restrained and asphyxiated to death.

14 22. At all material times, and alternatively, the actions and omissions of each Defendant
15 were conscience-shocking, reckless, deliberately indifferent to Decedent's and Plaintiff's rights,
16 negligent, and objectively unreasonable.

17 **DAMAGES**

18 23. As a consequence of Defendants' violation of Plaintiff's federal civil rights under 42
19 U.S.C. §1983 and the Fourth and Fourteenth Amendments, Plaintiff was mentally, and emotionally
20 injured and damaged as a proximate result of Decedent's wrongful death, including but not limited
21 to: Plaintiff's loss of familial relations, Decedent's society, comfort, protection, companionship, love,
22 affection, solace, and moral support and financial support.

23 24. Plaintiff seeks both survival and wrongful death damages, pursuant to C.C.P. Sections
24 377.60 and 377.61 and Probate Code Section 6402(b), for the violation of both Decedent's and her
25 rights. Additionally, Plaintiff is entitled to the reasonable value of funeral and burial expenses
26 pursuant to C.C.P. §§ 377.60 and 377.61 and loss of financial support.

27 25. Plaintiff is further entitled to recover damages incurred by Decedent before he died as
28 a result of being deprived without due process of his right to life, and to any penalties or punitive

1 damages to which Decedent would have been entitled to recover had he lived, including damages
2 incurred by Decedent consisting of pain and suffering he endured as a result of the violation of his
3 civil rights.

4 26. Plaintiff found it necessary to engage the services of private counsel to vindicate the
5 rights of Decedent and Plaintiff's rights under the law. Plaintiff is therefore entitled to an award of
6 attorneys' fees and/or costs pursuant to statute(s) in the event that he is the prevailing party in this
7 action under 42 U.S.C. § 1983 and 1988.

8
9 **FIRST CAUSE OF ACTION**

10 **(42 U.S.C. section 1983)**

11 **(Excessive Force)**

12 **(Against Defendants McGee, Burden, Craft, Vazquez, Gonzales, Nelson, Tomsic and**
13 **DOES 1-5)**

14 27. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through
15 26 of this Complaint.

16 28. The foregoing claim for relief arose in Decedent's favor and Decedent would have
17 been the Plaintiff with respect to this claim if he had lived.

18 29. Defendant(s) unjustified tasing and improper physical restraint deprived Decedent of
19 his right to be secure in his person against unreasonable searches and seizures as guaranteed to
20 Decedent under the Fourth Amendment to the United States Constitution and applied to state actors by
21 the Fourteenth Amendment.

22 30. As a result, Decedent suffered extreme pain and suffering and eventually suffered a
23 loss of life and of earning capacity. Plaintiff has also been deprived of the life-long love,
24 companionship, comfort, support, society, care, and sustenance of Decedent, and will continue to be
25 so deprived for the remainder of her natural life

26 31. Defendants' actions thus deprived Decedent of his right to be free from unreasonable
27 searches and seizures under the Fourth Amendment and applied to state actors by the Fourteenth
28 Amendment.

32. The conduct of Defendants was willful, wanton, malicious, and done with reckless
disregard for the rights and safety of Decedent.

1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

2 **SECOND CAUSE OF ACTION**

3 **(42 U.S.C. section 1983)**

4 **(Denial of Medical Care)**

5 **(Against Defendants McGee, Burden, Craft, Vazquez, Gonzales, Nelson, Tomsic and**
6 **DOES 1-5)**

7 33. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through
8 32 of this Complaint.

9 34. The foregoing claim for relief arose in Decedent's favor and Decedent would have
10 been the Plaintiff with respect to this claim if he had lived.

11 35. The denial of medical care by Defendants deprived Decedent of his right to be secure
12 in his person against unreasonable searches and seizures as guaranteed to Decedent under the Fourth
13 Amendment to the United States Constitution and applied to state actors by the Fourteenth
14 Amendment.

15 36. As a result, Decedent suffered extreme pain and suffering and eventually suffered a
16 loss of life and earning capacity. Plaintiff has also been deprived of the life-long love, companionship,
17 comfort, support, society, care, and sustenance of Decedent, and will continue to be so deprived for
18 the remainder of their natural lives.

19 37. Defendants knew that failure to provide timely medical treatment to Decedent could
20 result in further significant injury or the unnecessary and wanton infliction of pain, but disregarded
21 that serious medical need, causing Decedent great bodily harm and death.

22 38. The conduct of Defendants was willful, wanton, malicious, and done with reckless
23 disregard for the rights and safety of Decedent.

24 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(42 U.S.C. § 1983)

**(Violation of Plaintiffs' 14th Amendment Rights/Right to Familial Relationship)
(Against Defendants McGee, Burden, Craft, Vazquez, Gonzales, Nelson, Tomsic and
DOES 1-5)**

39. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 38 of this Complaint.

40. Plaintiff had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive her of life, liberty, or property in such a manner as to shock the conscience, including but not limited to, unwarranted state interference in Plaintiff's familial relationship with her son, Decedent.

41. Decedent had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive him of his right to life, liberty, or property in such a manner as to shock the conscience.

42. As a result of the excessive force by Defendants, Decedent died. Plaintiff was thereby deprived of her constitutional right of familial relationship with her son, Decedent.

43. Defendants, acting under color of state law, thus violated the Fourteenth Amendment rights of Plaintiff to be free from unwarranted interference with her familial relationship with Decedent.

44. The aforementioned actions of Defendants, along with other undiscovered conduct, shock the conscience, in that they acted with deliberate indifference to the constitutional rights of Decedent, Plaintiff, and with purpose to harm unrelated to any legitimate law enforcement objective.

45. Defendants, acting under color of state law, thus violated the Fourteenth Amendment rights of Decedent and Plaintiff.

46. As a direct and proximate cause of the acts of Defendants, Decedent experienced severe pain and suffering and lost his life and earning capacity. Plaintiff suffered extreme and severe mental anguish and pain and has been injured in mind and body. Plaintiff has also been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of Decedent, and will continue to be so deprived for the remainder of her natural life.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

55. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 54 of this Complaint.

57. As a direct and proximate result of Defendant's violation of Civil Code § 52.1, Decedent suffered violations of his constitutional rights, and suffered damages as set forth herein.

59. Plaintiff is entitled to treble damages, but in no case less than \$4,000.00 and an award of his reasonable attorney's fees pursuant to Civil Code § 52(a).

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

61. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 60 of this Complaint.

